

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 587

S.P. 196

In Senate, February 3, 2005

An Act To Make Changes to the Banking Laws

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SULLIVAN of York.

Cosponsored by Senator: SNOWE-MELLO of Androscoggin, Representatives: HARLOW of Portland, McKANE of Newcastle, PERRY of Calais, PILON of Saco, RICHARDSON of Warren.

Be it enacted by the People of the State of Maine as follows:

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Sec. 1. 9-B MRSA §131, sub-§32, as repealed and replaced by PL 1975, c. 666, §4, is amended to read:

32. Savings account. "Savings account" or "savings deposit" means a deposit or account in a financial institution in which the depositor is not required by the deposit contract, but may at any time be required by the financial institution, to give notice in writing of an intended withdrawal not less than ~~30~~ 7 days before such withdrawal is made and ~~which that~~ is not payable on a specified date or at the expiration of a specified time after the date of deposit.

Sec. 2. 9-B MRSA §131, sub-§37, as amended by PL 1997, c. 398, Pt. A, §26, is further amended to read:

37. Service corporation. "Service corporation" means a corporation, limited liability company or limited partnership substantially all the activities of which consist of originating, purchasing, selling and servicing loans and participation interests therein; or clerical, bookkeeping, accounting and statistical or similar functions related to a financial institution or real estate activities; or management, personnel, marketing or investment counseling related to a financial institution or real estate activities; or establishing or operating one or more satellite facilities; or any activity authorized by the superintendent by rule or order that has been authorized under federal law for service corporations owned or controlled by national banks, federally chartered savings and loan associations, federally chartered savings banks or federally chartered credit unions. The purpose of authorizing any such activity is to maintain competitive equality between federally chartered and state-chartered institutions.

Sec. 3. 9-B MRSA §231, sub-§1, ¶B, as repealed and replaced by PL 1995, c. 628, §16, is amended to read:

B. The superintendent may restrict the withdrawal of funds from one or more financial institutions in an order issued under paragraph A if, in the opinion of the superintendent, extraordinary circumstances make such action necessary and appropriate for the protection of depositors, ~~shareholders~~ investors or the public.

Sec. 4. 9-B MRSA §231, sub-§3, ¶A, as enacted by PL 1975, c. 500, §1, is amended to read:

A. Whenever, in the opinion of the superintendent, the violation or practice set forth in subsection 1 requires

2 immediate action for the protection of depositors or
3 ~~shareholders investors, or where--such~~ the violation or
4 practice, or the continuation thereof, is likely to cause
5 insolvency or substantial dissipation of the assets or
6 earnings of the institution, the superintendent may issue
7 orders pursuant to subsection 1, which shall become
8 effective upon service thereof, without prior notice or
9 hearing.

10 **Sec. 5. 9-B MRSA §312, sub-§5, ¶D,** as enacted by PL 1997, c.
11 398, Pt. C, §7, is amended to read:

12 D. All initial and subsequent capital contributions must be
13 in the form of cash, unless otherwise approved by the
14 superintendent.

15 **Sec. 6. 9-B MRSA §342, sub-§1, ¶H** is enacted to read:

16 H. Upon approval of the superintendent and evidence that
17 the converting institution has complied with all applicable
18 state and federal laws, rules and regulations, the
19 superintendent shall issue to the resulting institution a
20 certificate specifying the name of the converting
21 institution and shall file a copy of the certificate with
22 the Secretary of State. This certificate, once filed, is
23 conclusive evidence of the conversion and of the correctness
24 of all proceedings relating to the conversion in all courts
25 and places. Unless a later date is specified in the
26 certificate, the conversion is effective upon issuance of
27 the certificate.

28 **Sec. 7. 9-B MRSA §412-A, sub-§3,** as enacted by PL 1997, c.
29 398, Pt. I, §3, is repealed.

30 **Sec. 8. 9-B MRSA §412-A, sub-§3-A** is enacted to read:

31 **3-A. Approval.** Any issuance considered as capital under
32 subsection 1 or under rules adopted under subsection 1 must be
33 submitted to the superintendent for the superintendent's approval
34 at least 10 days prior to issuance and include any documentation
35 the superintendent considers necessary.

36 **Sec. 9. 9-B MRSA §445, sub-§1,** as amended by PL 1997, c. 22,
37 §12, is further amended to read:

38 **1. Authorization.** A financial institution may establish,
39 acquire or invest in the ~~capital--stock~~ equity interest,
40 obligations or other securities of a service corporation, as
41 defined in section 131, or otherwise participate in or utilize
42 the service of such a corporation. A service corporation may be
43

2 owned by one or more institutions engaged in the business of
banking.

4 **Sec. 10. 9-B MRSA §864, sub-§2, ¶A,** as enacted by PL 1993, c.
99, §2, is amended to read:

6 A. The service corporation is structured as--either--a
8 ~~corporation or limited partnership, in order~~ to limit the
credit union's exposure to loss; and

10 **Sec. 11. 9-B MRSA §882,** as amended by PL 1997, c. 108, §14,
12 is repealed and the following enacted in its place:

14 **§882. Use of term "credit union"**

16 1. Use of term authorized. A person, if duly authorized
under the laws of this State, another state or the United States
18 to conduct the business of banking as a credit union, may use as
a part of the name or title under which it conducts business in
20 this State the term "credit union." The superintendent may
require the filing of supporting documentation relating to this
22 paragraph in the form and manner and containing any information
the superintendent may prescribe.

24 2. Use of term prohibited. Except as provided in
26 subsection 1, a person may not use the term "credit union" as
part of the name or title under which business is conducted or
28 as a designation of such a business without prior written
approval of the superintendent. In determining whether to grant
30 written permission, the superintendent shall consider whether the
business to be conducted is similar to the business of banking
32 and whether using those terms or any derivatives of those terms
could be deceptive or otherwise injurious to public interest.

34 3. Violation; penalty. A person who violates any provision
36 of this section is subject to a civil penalty of not more than
\$10,000 for each violation.

38 4. Exception. This section does not prohibit the use of
40 any name by a person who received written permission from the
superintendent to use the name prior to the effective date of
42 this section.

44 **Sec. 12. 9-B MRSA §1019-A, sub-§§1 and 2,** as enacted by PL
1991, c. 386, §27, are amended to read:

46 **1. Issuance of stock, capital notes or debentures.** The
48 issuance of ~~preferred stock~~ equity interest, capital notes or
debentures with an original maturity of 3 years or greater.
50 Notice must be provided at least 10 days prior to issuance and

2 must contain a copy of any United States Securities and Exchange
Commission filings, private placement memoranda or other
4 documents describing the proposed issue to potential investors;
and

6 **2. Purchase of own capital stock.** The purchase of shares
of any type of its own ~~capital--stock~~ equity interest. Notice
8 must contain such information as required by the superintendent,
and

10 **Sec. 13. 9-B MRSA §1019-A, sub-§3** is enacted to read:

12 **3. Exception requiring approval.** The issuance of equity
14 interest or capital notes by a Maine financial institution
holding company that is not required to file notice with the
16 United States Securities and Exchange Commission. Issuance under
this subsection also requires prior approval of the
18 superintendent. A Maine financial institution holding company
may not purchase or redeem its equity interests without the
20 superintendent's prior written approval if the gross
consideration for purchase or redemption, when aggregated with
22 the net consideration paid by the company for all such purchases
or redemptions during the preceding 12 months, is equal to 10% or
24 more of the company's consolidated net worth.

26 **Sec. 14. 9-B MRSA §1215, 2nd ¶,** as enacted by PL 1997, c. 398,
Pt. J, §2, is amended to read:

28
30 If the holding company is not deemed to be a financial
institution holding company under chapter 101 by virtue of
controlling financial institutions other than nondepository trust
32 companies, the superintendent may examine the holding company,
including its subsidiaries and affiliates, to the extent
34 necessary to determine the soundness and viability of the
nondepository trust company.

36 **Sec. 15. 9-B MRSA §1226, 2nd ¶,** as enacted by PL 1997, c. 398,
38 Pt. J, §2, is amended to read:

40 If the holding company is not deemed to be a financial
institution holding company under chapter 101 by virtue of
controlling financial institutions other than a merchant bank,
42 the superintendent may examine the holding company, including its
subsidiaries and affiliates, to the extent necessary to determine
44 the soundness and viability of the merchant bank.

SUMMARY

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4 This bill makes several changes to the banking laws in the
Maine Revised Statutes, Title 9-B.

6 1. The bill amends the definitions of "savings account" and
"service corporation."

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10 2. The bill clarifies that the Superintendent of Financial
Institutions may restrict withdrawal of funds to protect
investors.

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14 3. The bill clarifies that both initial and subsequent
capital contributions to organize a financial institution must be
in the form of cash, unless otherwise approved by the
16 Superintendent of Financial Institutions.

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20 4. The bill enacts language establishing a certificate that
is evidence of conversion from a federal to a state charter that
will be filed with the Secretary of State.

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24 5. The bill changes the current notification procedure for
issuance of new bank capital to an approval process.

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28 6. The bill replaces the terms "capital stock" and
"preferred stock" in several sections of the banking laws with
the term "equity interest," which is a defined term in the
banking laws.

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32 7. The bill clarifies that a credit union may organize or
invest in a service corporation regardless of its business
structure so long as it is structured to limit the credit union's
exposure to loss.

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36 8. The bill clarifies the law governing the use of the
restricted term "credit union," bringing the law into conformance
with the provisions governing use of other restricted terms:
38 "bank," "savings" and "trust."

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42 9. The bill incorporates a provision that requires only
those Maine financial institution holding companies that do not
have to file notice with the United States Securities and
Exchange Commission to first receive approval of the
44 superintendent before issuance of equity interest or capital
notes.

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48 10. The bill clarifies the authority of the superintendent
to examine a holding company of a nondepository trust company or
merchant bank, including its subsidiaries and affiliates.